

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

OLGA PIERCE

Claimant

VS.

UNITED METHODIST YOUTHVILLE INC.

Respondent

AND

EBI COMPANIES

Insurance Carrier

Docket No. **255,584**

ORDER

Respondent requests review of a preliminary Order entered by Administrative Law Judge Pamela J. Fuller on January 19, 2001.

ISSUE

The respondent raises the issue of the compensability of the claim.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant testified that as part of her job duties as a youth care worker for the respondent she engaged in sporting activities with the juveniles placed with the respondent. On December 30, 1999, she played basketball for approximately 30 minutes immediately before she left work that day. Later that evening she began to experience pain and a burning sensation in her left elbow. The next day she immediately advised her supervisor of the injury. She further testified that she had never had any prior problems with her elbow.

The employer referred the claimant to Dr. Amayo in Wichita. The claimant was initially diagnosed with lateral epicondylitis and treated conservatively with splints, cortisone

injections and physical therapy. Dr. Amayo referred the claimant to Dr. Shah when there was no improvement following conservative treatment.

Dr. Shah repeated the cortisone injection as well as splinting of the elbow. Ultimately, the doctor recommended a surgical fasciotomy and release for lateral epicondylitis.

Respondent contends that there is no evidence that the basketball game caused the injury to the claimant's elbow. In support of that contention the respondent provided Dr. Amayo with a letter which apparently confirmed a prior discussion wherein the doctor could not ascertain whether the claimant's condition arose as a result of the basketball game or as a result of her prior employment as a bookkeeper. The doctor was instructed to sign the letter if it accurately reflected his opinion. The letter was signed by the doctor. Such evidence does not refute the claimant's testimony regarding her injury.

The claimant's uncontradicted testimony indicated that after playing basketball at work she began to experience pain in her left elbow. She further testified that she had never experienced any pain in that elbow during her earlier employment activities as a bookkeeper.

It is the Board's determination that the claimant has met her burden of proof to establish that she sustained injury to her left elbow arising out of and in the course of her employment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the preliminary order of Administrative Law Judge Pamela J. Fuller dated January 19, 2001, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March 2001.

BOARD MEMBER

Copies to:

William R. Thompson, Claimant's Attorney
R. Todd King, Respondent's Attorney
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director